

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 WESTERN DIVISION

3 UNITED STATES OF AMERICA,) Docket No. 11 CR 50062
4))
5) Rockford, Illinois
6) Friday, November 6, 2015
7) 1:30 o'clock p.m.
8))
9 DAYTON POKE,))
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8 TRANSCRIPT OF PROCEEDINGS
9 BEFORE THE HONORABLE FREDERICK J. KAPALA

10 APPEARANCES:

11 For the Government: HON. ZACHARY T. FARDON
12 United States Attorney
13 (327 S. Church Street,
14 Rockford, IL 61101) by
15 MR. JOSEPH C. PEDERSEN
16 Assistant U.S. Attorney
17 For the Defendant: MR. FRANKLIN C. COOK
18 (P.O. Box 237,
19 Freeport, IL 61032)
20 Also Present: MS. JENNIFER TABORSKI
21 Probation Office
22 Court Reporter: Mary T. Lindbloom
23 327 S. Church Street
24 Rockford, Illinois 61101
25 (779) 772-8309

1 THE CLERK: 11 CR 50062, U.S.A. v. Dayton Poke.

2 MR. PEDERSEN: Good afternoon, your Honor. Joe
3 Pedersen on behalf of the United States.

4 MR. COOK: Good afternoon, your Honor. Frank Cook on
5 behalf of the defendant, Dayton Poke.

6 THE COURT: Good afternoon.

7 Case comes before the court for a continued sentencing
8 hearing for resentencing upon remand by the Seventh Circuit
9 Court of Appeals. The parties ready to proceed?

10 MR. COOK: Your Honor, I was speaking to Mr. Poke a few
11 minutes ago. He's indicated that he no longer wants me involved
12 in the case.

13 THE COURT: Why is that, Mr. Poke?

14 DEFENDANT POKE: I mean, because I'm asking him to
15 argue some of the things that the appellate court mentioned in
16 my resentencing, you know what I'm saying, for me a lesser
17 sentence, and he saying he refusing to do that. So, I mean,
18 under my right, I'm entitled to argue a lesser sentence. That's
19 what I'm back for. And mention some of the things that I feel
20 are relevant to my sentence. And as my lawyer, that's his job,
21 but, I mean, he's saying he's refusing to do it.

22 THE COURT: What issues are those, Mr. Cook?

23 MR. COOK: The issue really has to do with the scope of
24 the remand, your Honor. I have absolutely no problem arguing
25 for a reduced sentence within the scope of the remand.

1 THE COURT: Well, what issues are you talking about,
2 Mr. Poke?

3 DEFENDANT POKE: I mean, just some of the things that
4 they mention -- refer to in the Robert Presley case, you know
5 what I'm saying, and taking it to count. As far as they
6 stipulating the cost of an inmate being in the BOP, that you
7 should take that into consideration, and the PSI and the
8 government with my lawyer in --

9 THE COURT: What do you mean the PSI and the
10 government? What's that mean?

11 DEFENDANT POKE: I mean, they all supposed to get
12 together and take in consideration the costs of a federal inmate
13 before sentencing, as they say in Presley. They referring to
14 Presley to take that in account in my sentence.

15 THE COURT: It was the costs, and what was the first
16 thing that you mentioned?

17 DEFENDANT POKE: Which part?

18 THE COURT: No. About the things you wanted to bring
19 up.

20 DEFENDANT POKE: Oh, the 35 -- some of the 3553(a).

21 THE COURT: No, no. You said costs because it was
22 brought up in Presley.

23 DEFENDANT POKE: I did.

24 THE COURT: Was there another issue in Presley that --

25 DEFENDANT POKE: I mean, just the hard sentencing, the

1 aging out of the federal inmate.

2 THE COURT: Age. All right.

3 DEFENDANT POKE: I mean, under them circumstances, I
4 was wondering ain't that entitled to a supplemental sentencing
5 memorandum? I mean, the --

6 THE COURT: Nobody's asked for a supplemental
7 sentencing memorandum.

8 DEFENDANT POKE: But that's what I've been trying to
9 talk to him about. That was the whole purpose of asking for the
10 continuance so we can talk about this, but he never came to see
11 me yesterday, and we just talked in a bullpen for about five
12 minutes, and I was trying to explain to him these some of the
13 things that I want to add in because these some of the things
14 that they mentioned for you to take into consideration during
15 the sentence.

16 THE COURT: So, you want Mr. Cook to address age and
17 cost.

18 DEFENDANT POKE: I mean, yes. And, I mean, I wanted to
19 do a little more research with my lawyer so we can, you know
20 what I'm saying, be prepared when we came in here, you know what
21 I'm saying, for me to be able to explain it better because they
22 don't got no access to no computer in Ogle County. So, I want
23 to sit down with him and explain some of these things and get a
24 couple of days to do some research so we can get a clear
25 understanding, but he --

1 THE COURT: What research do you need to do on age and
2 cost?

3 DEFENDANT POKE: I mean, to prepare a proper
4 supplemental sentencing memorandum.

5 THE COURT: On age and cost?

6 DEFENDANT POKE: I mean, and a few other things that
7 they mention up in here as far as --

8 THE COURT: I want to know all the things that you want
9 argued that Mr. Cook --

10 DEFENDANT POKE: And as far as me being a low level
11 drug dealer and how that refer to the hard sentencing that you
12 gave me, and I'm entitled to argue for a lenient sentence, you
13 know what I'm saying, whether I'm a career, even though I got
14 the career or the armed career provision and how they explain
15 that in certain situations criminals will be -- it will arouse
16 for certain criminals to be sentenced at 30, 30 years or
17 35 years, but they explain that in my case this ain't a case of
18 such situation.

19 THE COURT: I don't understand what you just said.

20 DEFENDANT POKE: They saying that in my case the 1.2 --

21 THE COURT: Who's they, first of all?

22 DEFENDANT POKE: The appellate court. They explaining
23 in my appeal that a person in my situation, I mean, that's just
24 too much time.

25 THE COURT: No, they didn't say it's too much time.

1 They sent it back down here for me to consider your sentence in
2 light of some new issues that they wanted to address. They
3 never said that your sentence was too high. I didn't read it in
4 the opinion, anyway.

5 DEFENDANT POKE: Huh?

6 THE COURT: They never said that 420 months was too
7 high.

8 DEFENDANT POKE: I mean, if they tell you to take in
9 consideration of the Presley case and they arguing the amount of
10 time, they explain that the amount of time that we receiving --
11 and in Presley they stipulated that that was a harsh sentence
12 and why they felt it was a harsh sentence. And then in my
13 situation they was asking you to take in account and
14 consideration what they said in Presley.

15 THE COURT: Well, harsh sentence does not equate to an
16 improper sentence. Sometimes a harsh sentence is what's
17 required in a case.

18 DEFENDANT POKE: And that's what they said in this, and
19 they say my case ain't one of them.

20 THE COURT: No, they didn't say that.

21 DEFENDANT POKE: At the last part where it says: Some
22 criminal commits acts of such evil as to arouse righteous
23 indignation that demands heavy punishment without regard to
24 deterrence, but the defendant in this case is a small-bore drug
25 dealer, charged with possession of only 1.2 grams of crack with

1 intent to sell. The district court need to consider whether
2 concerns of deterrence, either special, deters the defendant
3 from committing crimes upon his release from prison, or general,
4 his punishment as a deterrent to others who might consider
5 committing similar crimes, warrant a sentence of 420 months.

6 THE COURT: All right. That's included in your issue
7 regarding being a low level drug dealer, I think.

8 DEFENDANT POKE: Excuse me?

9 THE COURT: What you -- the issue that you've just
10 outlined is included in the issue that you described as being a
11 low level drug dealer.

12 So, we've got three issues that you want to raise.
13 Age, cost of incarceration, and being a low level drug dealer.

14 DEFENDANT POKE: Yeah.

15 THE COURT: All right.

16 DEFENDANT POKE: And is you familiar with the Johnson
17 case?

18 THE COURT: Well, there's a lot of Johnson cases.

19 DEFENDANT POKE: The armed career. I don't got the
20 case in front of me. I referred it to my lawyer.

21 THE COURT: Right. We already talked about that,
22 though --

23 DEFENDANT POKE: I mean, that's --

24 THE COURT: -- when we were in court last time, and
25 that's not part of the resentencing. You've been designated as

1 an armed career criminal. That was never brought up at the
2 prior sentencing. And so, it's not part of the remand.

3 DEFENDANT POKE: I mean, but by being a retroactive
4 case -- I mean, by me being back for resentencing, that don't
5 apply to me as retroactive for the Seventh Circuit?

6 THE COURT: Well, we're not -- that issue's already
7 been resolved in your case. That's already been set. You don't
8 need to address that again.

9 DEFENDANT POKE: So, even though the laws change, the
10 guidelines got amended, and new case law has come out, and
11 they're retroactive, you saying by me being resentenced, don't
12 none of that apply to me?

13 THE COURT: Well, that case didn't come out since
14 you've been arrested -- since you've been --

15 DEFENDANT POKE: That case was just ruled --

16 THE COURT: Since you've been sentenced.

17 DEFENDANT POKE: Yeah, that case was just decided a few
18 months ago.

19 MR. COOK: Your Honor, I believe Johnson v. United
20 States was a Supreme Court decision earlier this year that dealt
21 with what was called the residual clause of the armed career
22 offender statute and determined that that was unconstitutional.
23 It was unconstitutionally vague. That's the Johnson decision.

24 DEFENDANT POKE: I mean, if I would have -- if he was
25 willing on working with me, we could have sat down and got some

1 of this stuff situated. I understand you all want to get the
2 sentence over with, but, you know, I just want everything that
3 I'm entitled to, you know what I'm saying. This is my life on
4 the line.

5 THE COURT: But none of your predicate convictions were
6 based upon the residual clause. So, Johnson doesn't apply to
7 you.

8 DEFENDANT POKE: I mean, as far as they saying Johnson
9 is unconstitutionally vague.

10 THE COURT: But the part that's vague is the residual
11 clause. None of your predicate offenses were based upon the
12 residual clause. So, that's inapplicable. Johnson is
13 inapplicable to your situation.

14 DEFENDANT POKE: I mean, Johnson stipulates as far as
15 what's considered actually violent and what's not considered
16 violent, and some of my -- one of my predicates that's used, the
17 language of the potential risk, without us really doing the
18 research --

19 THE COURT: I'm telling you that the Johnson case is
20 based upon the vagueness of the residual clause in predicate
21 offenses, and none of your predicate offenses were based on that
22 residual clause.

23 DEFENDANT POKE: Okay. You know, I just want to put it
24 on the record, you know what I'm saying.

25 THE COURT: That's fine. Age, cost, and being a low

1 level drug dealer. I'll allow you to bring that up in this
2 proceeding.

3 DEFENDANT POKE: I mean --

4 THE COURT: Mr. Cook, I'll allow you to argue those
5 issues.

6 DEFENDANT POKE: I mean, with no research or us even to
7 make our findings stronger.

8 THE COURT: I'll let you talk to Mr. Cook now about it.
9 I don't know that there's any research that needs to be done.
10 But I'll leave that to you, Mr. Cook.

11 MR. COOK: Your Honor, my understanding of things --
12 and if I'm wrong, I would apologize -- is that with the scope of
13 the remand, as defined by the decision here, we're basically
14 looking at, as far as the guidelines are concerned, the 360
15 months on up to life. But that is basically the guideline
16 sentencing range that I have to deal with under the scope of the
17 remand. And I think the issues that Mr. Poke is bringing up all
18 factor into that and, in fact, are touched upon by Judge Posner.
19 It's just a question of whether we can go under 360, as far as
20 the guidelines are concerned.

21 THE COURT: Okay. But Judge Posner did touch upon the
22 Presley case. He does mention age.

23 MR. COOK: And that was going to be part of my
24 argument.

25 THE COURT: Okay. But I will allow you to argue how

1 age is implicated, how the cost of incarceration is implicated,
2 and how Mr. Poke being a low level drug dealer is implicated
3 here. And so, we'll go forward on those. I'll give you some
4 time to talk to Mr. Poke, and maybe we can still --

5 DEFENDANT POKE: I mean, your Honor, if he like -- if
6 he don't want to do it, it ain't no reason to force him because,
7 I mean, you know, I want my situation did properly. I don't
8 want it did out of frustration or anger. I mean, I'm looking at
9 a lot of time, you know what I'm saying.

10 THE COURT: All right. You don't have to worry about
11 Mr. Cook feeling any resentment or umbrage or not giving his
12 full attention or efforts to arguing these cases. He's a
13 lawyer. He has a very good reputation. He has dealt with these
14 cases many times in the past. He can represent you very well in
15 arguing your position regarding these three extra issues.

16 DEFENDANT POKE: I understand that, but when I told him
17 to come talk to me so we can be prepared for these arguments,
18 everything that I was saying, he shot it down. He told me it
19 don't apply to me. He told me it's irrelevant. But then --

20 THE COURT: Okay. Well, I'm telling you right now that
21 I'll allow you to bring those things up. And so, you can talk
22 to him right now.

23 DEFENDANT POKE: But that's what I'm saying. The time
24 that we been waiting for court, we could have sat down and came
25 up with a better -- not a rush job, not a rush job issue. I

1 mean, you gave us a continuance 'til today. I just not seen
2 him. I mean, what was the continuance for if I wasn't going to
3 see him.

4 THE COURT: I'll let you talk to him right now. Let's
5 see how far we can get.

6 DEFENDANT POKE: I mean, he don't want to do it, your
7 Honor. I mean, he clearly told me he don't want to do it.

8 THE COURT: He didn't say that.

9 DEFENDANT POKE: He did say that. He told me that
10 downstairs.

11 THE COURT: He didn't say that. He said that he
12 thought it was beyond the scope of the remand. He has a good
13 point. He has a good argument. But I've said that I'm going to
14 allow you to present those. And so, he's willing to argue those
15 points for you.

16 All right. Talk to Mr. Poke, and let's see how far we
17 can get. Hopefully we can still salvage the afternoon.

18 (Whereupon, a recess was taken at 1:50 p.m., after which the
19 hearing was resumed at 2:10 p.m.)

20 THE COURT: All right. Back on the record.

21 I should clarify in our discussion about Johnson that
22 when I said none of the offenses that form the predicate for the
23 armed career criminal designation of Mr. Poke involved the
24 residual clause, I was talking about the two controlled
25 substances offenses and the robbery, and those would be the

1 three offenses. There was some discussion about mob action, but
2 the mob action is surplus to the ACC designation.

3 All right. Where are we at?

4 MR. COOK: I think we're ready to proceed, your Honor.

5 THE COURT: All right. Ready to go, Mr. Poke?

6 DEFENDANT POKE: Yes. I have no choice.

7 THE COURT: We left off when we were in court regarding
8 the sentencing materials. I think I listed all of those for
9 you. Do the parties agree that all those materials are
10 appropriate for me to use for purposes of sentencing?

11 MR. PEDERSEN: Yes, your Honor.

12 MR. COOK: Yes, your Honor.

13 THE COURT: Are there any other written materials I
14 should consider at the present time?

15 MR. PEDERSEN: Your Honor, I have copies of -- in
16 relation to the 3553(a) factors, I have copies of three
17 sentencing -- or I'm sorry -- trial exhibits that I was going to
18 refer to, Government's Exhibits 12, 13, and 21.

19 THE COURT: During the trial of this case?

20 MR. PEDERSEN: Yeah, they were admitted at trial.

21 THE COURT: That would be something you'd bring up
22 during the evidence portion, I believe.

23 MR. PEDERSEN: Okay. That's fine.

24 THE COURT: Any other written materials?

25 MR. COOK: No, your Honor.

1 THE COURT: Mr. Poke, at the original sentencing
2 hearing, you acknowledged that you read and reviewed the
3 materials that were presented at the original sentencing hearing
4 and that you discussed them with your attorney. Have you
5 discussed them with Mr. Cook?

6 DEFENDANT POKE: Somewhat.

7 THE COURT: Well, tell me what you haven't discussed.

8 DEFENDANT POKE: I mean, we discussed the things that
9 you sent us back there to discuss.

10 THE COURT: Well, I listed all those things when we
11 were in court yesterday, and I want to make sure you've
12 discussed those with Mr. Cook.

13 DEFENDANT POKE: Yes.

14 THE COURT: All right. And you've read and reviewed
15 the supplemental report dated August 29th, 2015? That's the new
16 report that was submitted since your last sentencing. And also
17 the bond sheet for case number 01 CF 1860. Have you reviewed
18 and discussed those with Mr. Cook?

19 DEFENDANT POKE: No, sir.

20 THE COURT: Well, you ought to do that.

21 MR. COOK: I believe the supplemental was the
22 October 29th.

23 THE COURT: October 29th, 2015.

24 MR. COOK: I think you said August.

25 THE COURT: Oh, I'm sorry.

1 MR. COOK: That's the things that I gave you.

2 DEFENDANT POKE: You gave them to me. We ain't
3 discussed it, though.

4 MR. COOK: All right.

5 THE COURT: Well, why don't you sit down and talk about
6 it. I can wait.

7 (Brief pause.)

8 DEFENDANT POKE: Yeah. Yeah, we did. We mentioned it.

9 THE COURT: All right. So, do you need any more time
10 to look at those?

11 DEFENDANT POKE: No.

12 THE COURT: All right. Does the defense have any
13 objections to or comments on the proposed or discretionary
14 conditions or special conditions of supervised release?

15 MR. COOK: Your Honor, the one -- I mean, in terms of
16 what the government has proposed?

17 THE COURT: Pardon me?

18 MR. COOK: What the government has proposed?

19 THE COURT: Right.

20 MR. COOK: I guess looking at it in terms of on the out
21 date that we're talking about here, I kind of question whether
22 there should be a restriction on binge drinking. I don't know
23 that that's necessarily illegal. It could probably lead to poor
24 behavior on occasion. I don't know that there's been any real
25 indication that there is that concern at work now and even less

1 reason to think that it could be a concern --

2 THE COURT: I'm not going to impose that condition.

3 MR. COOK: Okay. I also question to notify any
4 employer of the risk of future crimes based on the nature of the
5 defendant's offense. Here again when you look at it down the
6 road there, I don't know that that's something that's really
7 needed to accomplish anything and could be counterproductive in
8 terms of preventing employment.

9 THE COURT: Which one is that?

10 MR. COOK: It's on Page 4 towards the bottom. It's the
11 last bullet point.

12 THE COURT: I'm not going to impose that one.

13 MR. COOK: And just as a general proposition, the -- I
14 think it's right above that one where the defendant shall not
15 possess a firearm, ammunition, destructive device.

16 THE COURT: I think that's duplicative of mandatory
17 condition number one.

18 MR. COOK: Right.

19 THE COURT: So, I won't impose that one, either.

20 MR. COOK: That was it.

21 THE COURT: All right. At the original sentencing
22 hearing, we did make a correction to the presentence
23 investigation report, and just so it's clear, it's a minor
24 correction, but on paragraph 53 we amended that to show that on
25 June 8th, 2001, the defendant's sentence was discharged, not

1 that his parole was discharged.

2 All right. Do the parties have any dispute as to the
3 factual findings and conclusions contained in the presentence
4 report with that correction?

5 MR. PEDERSEN: No, your Honor.

6 MR. COOK: No, your Honor.

7 THE COURT: I will adopt the factual findings and
8 conclusions contained in the presentence report as corrected and
9 the accompanying sentencing materials. The presentence report
10 as corrected and the accompanying sentencing materials and the
11 transcript of these proceedings will stand as my factual
12 findings and conclusions.

13 The parties agree that the guidelines calculations have
14 already been -- the guidelines calculations issues have already
15 been resolved?

16 MR. COOK: Yes, sir.

17 MR. PEDERSEN: Yes, your Honor.

18 THE COURT: In the previous sentencing hearing, I used
19 the sentencing guideline manual in effect on November 1st, 2013.
20 Even if I used the sentencing guideline manual effective
21 November 1st, 2015, I believe the final total guidelines
22 imprisonment range would be the same.

23 Jennifer, do you concur?

24 MS. TABORSKI: Yes, your Honor.

25 THE COURT: Therefore, I will adopt the results of the

1 guidelines calculations contained in the presentence
2 investigation report. The advisory guidelines imprisonment
3 range for this case is 360 months to life. In addition, I find
4 that the supervised release range for Count 1 is six years, for
5 Count 2 is two to five years, and for Count 3 is two to five
6 years.

7 As to the remaining 3553(a) considerations, do the
8 parties have any evidence? Mr. Pedersen?

9 MR. PEDERSEN: Your Honor, it's evidence that was
10 already admitted at trial, but I have copies of Government's
11 Exhibits 12, 13, and -- or I'm sorry -- 12, 15, and 21.

12 THE COURT: Have you shared those with Mr. Cook?

13 MR. PEDERSEN: I've given him copies. I have no
14 further evidence.

15 THE COURT: You're going to reference these in your
16 argument?

17 MR. PEDERSEN: Yes.

18 MR. COOK: I was uncertain what factors these exhibits
19 might relate to.

20 MR. PEDERSEN: The nature and circumstances of the
21 offense.

22 THE COURT: Do you have any other evidence,
23 Mr. Pedersen?

24 MR. PEDERSEN: No, your Honor.

25 THE COURT: Mr. Cook, do you have any evidence?

1 MR. COOK: No.

2 THE COURT: Argument, Mr. Pedersen?

3 MR. PEDERSEN: Your Honor, we believe a sentence within
4 the guideline range would be appropriate considering all the
5 3553(a) factors. Specifically in relation to the nature and
6 circumstances of the offense, this case involved the defendant
7 possessing with intent to distribute eight individually wrapped
8 baggies containing approximately 1.2 grams of crack cocaine at
9 the same time he was in possession of a loaded .40 caliber gun
10 underneath the floorboard of the car he was driving when he was
11 stopped by Rockford police officers. Photographs of the handgun
12 that the defendant --

13 THE COURT: Underneath the seat, isn't it? The
14 floorboard is --

15 MR. PEDERSEN: I'm sorry. Underneath the seat on the
16 floorboard. Sorry. Correct.

17 And he was driving that vehicle that's depicted in
18 Government's Exhibits 12 and 15. That's a photograph of where
19 the gun was in the vehicle at the time he was stopped by police
20 officers.

21 In addition, the officers recovered the defendant's
22 cell phone at that time containing text messages that reflected
23 that he was involved in street level drug sales, and those text
24 messages were introduced at trial as Government's Exhibit 21.

25 After the defendant was stopped, he didn't comply with

1 the officer's commands to stay in the car. He got out of the
2 car, attempted to lock the car and prevent the officers from
3 accessing it, refused to give them the keys, and he had to be
4 forcibly taken to the ground and have the keys taken away from
5 him.

6 In addition, as to the nature and circumstances of the
7 offense and the defendant's history and characteristics, the
8 defendant has never taken any responsibility for his actions in
9 this case, specifically as to his possession of the crack
10 cocaine and the firearm with the intent to distribute it -- or
11 the possession of the crack with intent to distribute it or his
12 possession of the firearm.

13 The defendant, as far as his history and
14 characteristics, he has a total of 25 criminal history points,
15 almost double the amount that would be necessary to place him in
16 the highest criminal history category, and that's not counting
17 some of his convictions for traffic offenses for which he didn't
18 receive any criminal history points or his juvenile
19 adjudications for serious crimes, as well.

20 As the presentence report shows, starting with
21 paragraph 48, the defendant's criminal history began as a
22 juvenile. He was 15 years old when he was adjudicated for
23 aggravated battery, and that started a series of serious
24 offenses that he's committed all the way through the offense in
25 this case.

1 So, as far as the direction from the appellate court on
2 remand for the court to consider whether or not a lengthy
3 sentence is necessary for deterrence, either specific or
4 general, for this defendant and characterizing the defendant as
5 a small-bore drug dealer, that's correct. He was only arrested
6 with a small amount of crack cocaine. But he was arrested
7 committing a violent offense, possession of the firearm in
8 furtherance of a drug trafficking crime. He was convicted of
9 that offense, meaning that he possessed the gun in furtherance
10 of the drug trafficking crime.

11 There is no other reason for the defendant or no other
12 possible way that he could have used the firearm in furtherance
13 of his drug trafficking crime other than a violent fashion. The
14 gun wasn't used to help manufacture the crack cocaine or mix
15 crack together and use it to stir the cocaine. It was possessed
16 to protect the defendant's drugs and the money that he had on
17 his person, and that's what the jury convicted the defendant of.

18 The defendant has a serious criminal history, as I
19 indicated. He also has a serious history of not complying with
20 orders of the court or with rules while he's incarcerated.
21 Specifically as to not complying with orders of the court, from
22 the time the defendant was first adjudicated as a juvenile when
23 he was 15 until this offense, there's an unbroken chain of the
24 defendant being arrested for an offense, convicted, placed on
25 some type of either court supervision or parole, and then

1 violating those conditions by committing new offenses, in many
2 cases either additional drug trafficking crimes or violent
3 crimes such as aggravated battery, paragraph 51 of the
4 presentence report; robbery, paragraph 53; possession of a gun,
5 paragraph 61; possession with intent to distribute cocaine,
6 paragraph 64; aggravated battery, paragraph 65; paragraph 67,
7 possession with intent to distribute; and then paragraphs 68 and
8 69, while he was on parole for possession with intent to
9 deliver, he committed two driving offenses and was sentenced to
10 county jail time.

11 While he was on court release for the driving while
12 revoked charge, he committed a new offense of mob action for
13 which he was convicted and sentenced to jail, and while he was
14 on probation for that offense, he committed a new offense of
15 possession of cocaine with intent to distribute, and while that
16 case was pending, he committed this offense, hence the unbroken
17 chain of the defendant committing offenses from the time he was
18 15 until he committed the offense in this case, where it was a
19 pattern of committing an offense, being placed under some type
20 of court supervision or parole, and continually violating it by
21 committing new crimes. The defendant needs a long sentence for
22 specific deterrence to ensure and to protect the public from
23 future crimes of this defendant.

24 In addition, as I indicated, he has a long history of
25 violating rules while he's in custody, including the presentence

1 report outlines numerous violations, many serious and violent
2 violations, in paragraphs 73 to 78. The supplemental report
3 contains the underlying basis. The May 29th, 2014, contains the
4 reports of those violations.

5 And then as of October 29th of 2015, the special report
6 that was provided to the court detailed three new Bureau of
7 Prison discipline incidents since he was sentenced in this case,
8 and two of those violations involved allegations of the
9 defendant stalking female staff members and making very vulgar
10 comments to members and then also -- or I'm sorry -- staff
11 members intended to intimidate them. In addition, he told one
12 of the female staff members that he loved her, again a form not
13 meant -- not taken in a way where it was appreciated. It was
14 more taken as a form of aggression from the defendant, after he
15 had been instructed not to do so.

16 THE COURT: A form of what did you say? A form of what
17 from the defendant?

18 MR. PEDERSEN: Aggression and intimidation.

19 DEFENDANT POKE: I object to that, your Honor. That
20 ain't what the report says.

21 MR. PEDERSEN: Your Honor, I would ask that the
22 defendant be instructed if there's an objection to be made, he
23 has an attorney, that his attorney could make the objections.

24 THE COURT: I agree.

25 MR. PEDERSEN: Your Honor, you have a defendant

1 standing before you that has clearly demonstrated that he is in
2 great need of a sentence that is of sufficient length to ensure
3 that he is deterred from committing additional conduct, and
4 based on the defendant's history of repeated violations of court
5 orders, repeated history of failing to comply with simple rules
6 of pretrial incarceration, a sentence within the guideline range
7 would be appropriate to ensure that the guideline -- I'm
8 sorry -- that the sentencing factor of deterrence is
9 sufficiently addressed, and, therefore, we're requesting that
10 the court impose a sentence within the guideline range of 360
11 months to life.

12 THE COURT: Thank you.

13 Mr. Cook, argument.

14 MR. COOK: Your Honor, with regard to the factors to be
15 taken into account here, I think in light of the appellate
16 decision, the two things that kind of stand out as particularly
17 relevant at this point is factor (2)(B), to afford adequate
18 deterrence to criminal conduct and then also (a)(6), the need to
19 avoid unwarranted sentence disparities among defendants with
20 similar records who have been found guilty of similar conduct.

21 As Mr. Poke was described in that decision as a
22 small-bore drug dealer, the description seems accurate. We're
23 talking about the crime of conviction here, the drug related
24 crime of conviction here, is 1.3 grams, and that has landed him
25 in a sentencing range of 360 months on the low end, even though

1 30 years is the maximum sentence to be imposed for that
2 particular drug offense. I can't help but think that if we
3 weren't talking about armed career offender or the gun charge
4 here and we were only going to be sentencing him in light of the
5 statutory minimums and maximums, we would not be getting him up
6 to that 30-year mark in this case and that that would be saved
7 for people who are not small-bore drug dealers, but rather
8 kingpins and beyond. And therein lies the tension here between
9 the sentence he's received and what others have received for
10 similar or for greater offenses.

11 And one I'm personally familiar with is Robert Presley.
12 I was involved with Presley's trial. I saw all that evidence
13 unfold there. And he was certainly depicted as a major player
14 in the heroin trade in Rockford, and yet he ends up -- and was
15 involved in pretty dramatic shootouts. They had the AK-47 that
16 was hidden in his pants, guns all over the place. And he, from
17 what I understand, is in the same sentencing range as is
18 Mr. Poke, and I believe -- I'm not certain of this, but I
19 believe he ended up with 360 months ultimately upon remand in
20 that case. I think that disparity is kind of hard to justify, I
21 think, and I believe Judge Posner was hitting the nail on the
22 head pretty well with how harsh this particular sentence is with
23 regard to this particular defendant.

24 The idea of deterrence, too. I mean, one of the things
25 I've noticed over the 25 years or so that the U.S. Attorney's

1 Office has been involved in the drug trade in Rockford is it
2 continues. Typically I've noticed -- I've had the sense that
3 what happens is people get arrested, and it just ends up
4 creating job opportunities in an ongoing drug market. Either
5 there's new people recruited, new organizations come in to fill
6 the void created by law enforcement, and it just goes on and on
7 and on. And any sentence that is imposed on Mr. Poke,
8 Mr. Presley, or any number of others that I've dealt with over
9 the years I don't think is deterring that business from going
10 on. And here again it's something that Judge Posner recognized
11 in his decision.

12 So, ultimately it comes down to what do we need to be
13 concerned about with Mr. Poke at the tail end of the sentence.
14 At what point does he cease to be a sufficient concern to the
15 public to justify the expense of continuing to keep him
16 incarcerated. I think here again Judge Posner had it right in
17 terms of the statistics that he was citing, that we've known
18 forever that the older these people get, the older these
19 defendants get, the less likely it is they're going to
20 participate in the kind of crime that's landed them here in the
21 first place. I don't think there's a whole lot of reason to
22 think Mr. Poke's going to be any different in that regard; that
23 as time goes on, he's going to be less inclined to get involved
24 in this.

25 And, you know, admittedly, there's been disciplinary

1 issues at various facilities he's been involved in, and there's
2 nothing to say that that's not going to change down the road,
3 that there could become an awakening here where he realizes that
4 the way he has behaved has not served him well, and I think a
5 sentence of the lengths we're talking about here, even on the
6 low end, would be more than adequate to provide that opportunity
7 to unfold.

8 I don't see any reason why it should be beyond the
9 minimum established under the guidelines, and to some extent I
10 think it's hard to justify even that minimum, given the
11 disparity between his conduct on the offense of conviction and
12 that of others who have landed themselves in similar guideline
13 ranges. For that reason I would encourage the court to impose a
14 sentence as low as possible in this case and assure that at some
15 point in the future Mr. Poke is able to return to society as a
16 productive member.

17 THE COURT: Thank you.

18 Mr. Poke, you have an opportunity to address the court.
19 As I said the last time we had a sentencing hearing, you're not
20 required to say anything. You're not -- I'm not ordering you to
21 do so. You're under no obligation. But you do have the right
22 to say something in your own best interests that you see fit.
23 We call that a statement in allocution. And so, if you wish to
24 make a statement and make a part of this record information that
25 you think will help me arrive at a fair sentence in this case,

1 I'd like to hear from you now.

2 DEFENDANT POKE: Judge, first I want to elaborate --

3 THE COURT: Okay. Pull that in front of you so I can
4 hear what you have to say.

5 DEFENDANT POKE: I want to elaborate on the
6 disciplinary shot first that I received that the government's
7 talking about. And he's right. The light have hit me why I
8 want to change. And beside that --

9 THE COURT: What did you say?

10 DEFENDANT POKE: That my lawyer's right when he said
11 that somewhere down the line I would want to change. It already
12 happened because the shot that I caught was the stalking ticket
13 of me constantly putting in call-outs and asking them to get me
14 psychological help and admit me in programs, and for me
15 constantly doing it, they wrote me a stalking shot for asking
16 for help, you know.

17 I ain't perfect, but I can try to help better myself.
18 You know, some things the court and the BOP take out of content,
19 you know what I'm saying, instead of relaying the message the
20 way it is, you know. But it seems like no matter what I do,
21 even when I try to better myself, I'm doing wrong, you know what
22 I'm saying. You know, I apologize for the things I did in the
23 past. You know, some of the things when you're young, you ain't
24 really familiar what's wrong. You just going with what you was
25 taught. You know, I had poor guidance, you know what I'm

1 saying. I ain't proud of the things that I did.

2 And I'm wishing I can get back to the community and
3 help stop some of the crimes in the Rockford area and talk to
4 some of the kids that's going through what I went through, you
5 know. It's hard out there when you don't got no parents at all
6 and you trying to make it in life. Even if a person sits you
7 down and talk to you and explain to you that the path that
8 you're going down, it's the wrong path, but sometimes it's hard
9 to hear it and understand when you're in a forceful situation
10 when you're dealing with the streets.

11 You know, it's easy for a person that ain't lived my
12 lifestyle to say you can just stop, you know what I'm saying.
13 But a person can tell you to stop, but don't put you in a
14 situation that help you learn how to stop, you know what I'm
15 saying. And, you know, I can say that I ain't know how to
16 change my lifestyle to stop when you so caught up in it. But,
17 you know, now that I'm older, I sit down and I reflect the
18 lifestyle that I'm living, and I see the things on TV, and, you
19 know, it look crazy to me because I used to be that way.

20 But as time go on, you grow out of it, and you mature,
21 and you realize that, you know, I'm proud to be alive right now
22 and happy to be alive, that I was able to make it. A lot of
23 kids and people in my situation didn't make it. So, even though
24 I got a 35-year sentence, you know, I kind of still feel like
25 I've won because I'm still alive to tell my story to other

1 people to make them change their lives, you know.

2 I can't -- I can't -- you know, I ain't trying to force
3 the court to do nothing, but if I did get a second chance, I'm
4 pretty sure I could use my lifestyle and what I been through to
5 deter the rest of the kids in the crime that's going on out in
6 the streets because, I mean, there's no guiding. There's nobody
7 out there to really tell them that and show them that the road
8 that they're going down going to lead exactly where I'm at right
9 now because everybody they can talk to is either dead or in jail
10 for the rest of their life, you know what I'm saying.

11 So, you know, I'd like to apologize to the court, you
12 know what I'm saying, the government, my family, and everybody
13 who I been a nuisance to, you know. And I just wish I can get a
14 chance so I can give other people a chance to see the truth of
15 the road that they're going down that just going to leave them
16 in a similar situation like me.

17 THE COURT: Thank you. Why don't you all have a seat.
18 I'll share my thoughts with you.

19 I have considered the presentence report and
20 accompanying materials. I've considered the evidence and the
21 arguments made by the government and the defendant, as well as
22 the statement of the defendant. I've considered the sentencing
23 guidelines calculations and all of the other sentencing factors
24 contained in Section 3553(a).

25 Among those factors are the nature and circumstances of

1 the offense and history and characteristics of the defendant. I
2 also recognize the need for the sentence imposed to reflect the
3 seriousness of the offense, to promote respect for the law, and
4 to provide just punishment for the offense, to afford adequate
5 deterrence to criminal conduct, to protect the public from
6 further crimes of the defendant, and to provide the defendant
7 with needed educational or vocational training, medical care, or
8 other correctional treatment in the most effective manner, and
9 the need to avoid unwarranted sentence disparities among
10 defendants with similar records who have been found guilty of
11 similar conduct.

12 I have paid special attention to the directives of the
13 Court of Appeals in its order requiring a resentencing. I, of
14 course, have the utmost respect for the authority and dignity of
15 the Court of Appeals and take very seriously their orders,
16 instructions, and suggestions.

17 I believe the guidelines calculations in this case
18 provide an accurate starting point to evaluate the 3553(a)
19 factors. In its opinion the Seventh Circuit concluded that the
20 420-month prison sentence that was previously imposed appears to
21 involve an accidental double counting based on a failure to
22 consider the apportionment option found in Section 5G1.2(e) of
23 the guidelines manual. I fault myself for not explaining my
24 guidelines calculations better, but I can say unequivocally that
25 I knew that the final guidelines imprisonment range was 360

1 months to life, and I knew that a total sentencing of 360 months
2 on all of the counts of conviction, including Count 3, would
3 have been a within guideline sentence.

4 Indeed, as reflected in Pages 29 to 31 of the
5 transcript from the May 30th, 2014, hearing, the court attempted
6 to explain the somewhat cumbersome options laid out in
7 subsection (c) of Section 4B1.1 of the guidelines for
8 calculating the total guidelines range for a career offender who
9 also had a Section 924(c) conviction. In the process of doing
10 so, I corrected a miscalculation that was contained in the
11 presentence investigation report regarding the proper
12 calculation of the otherwise applicable guideline range as that
13 term is used in Section 4B1.1(c)(2)(A) and ultimately concluded
14 that the range under the table in Subsection (c)(3) was the
15 greater range, which led to my finding that the total guideline
16 imprisonment range in this case is 360 months to life.

17 However, I concluded that a sentence above the low end
18 of that range was the most appropriate sentence in this case
19 based on my consideration of all of the Section 3553(a) factors.
20 It was merely an unfortunate coincidence that the sentence
21 imposed was precisely 60 months above the low end of that range
22 and apparently gave the appearance of a mistake.

23 As to the 3553(a) factors other than the guidelines, at
24 the original sentencing hearing the court thoroughly considered
25 the applicable factors and addressed the defendant's arguments

1 in mitigation. I have reviewed the transcript from the original
2 sentencing hearing in preparation for today, and rather than
3 repeating everything that I previously stated, I believe it is
4 appropriate to reiterate by reference the reasons I gave to
5 support the sentence I imposed at the previous sentencing
6 hearing, including those factors in aggravation and mitigation I
7 referred to. I note that today Mr. Poke has again apologized
8 for what he's done. During the course of what I am about to
9 say, I will attempt to clarify and emphasize portions of those
10 remarks, and of course I will address additional matters.

11 At the original sentencing, I discussed the defendant's
12 behavioral issues as part of my analysis under Section 3553(a),
13 and from this review I concluded that the defendant was
14 extremely incorrigible and noted several instances in which the
15 defendant has not complied with the rules and regulations of the
16 places where he has been incarcerated. But in doing so, I
17 believe I understated defendant's reprehensible behavior while
18 in custody. His record while in detention is replete with
19 incidents of insolent and insubordinate remarks to staff and
20 refusing to follow lawful orders. Multiple times he has
21 threatened other inmates and has threatened the staff and their
22 family members, including their children, with physical harm and
23 with death. Specifically, he told staff members in the
24 Department of Corrections that he was going to kill their
25 children. Kill their children. He has struck a corrections

1 officer with a bag that was thrown at her, and he has fought
2 with corrections officers.

3 An alarming and disturbing aspect of the defendant's
4 characteristics is that sometimes he follows through on his
5 threats. On April 10th, 2013, in the McHenry County Jail, the
6 defendant refused to be moved from his cell to segregation and
7 used his dinner tray in an attempt to cause damage. He refused
8 to relinquish his tray and announced that the guards were going
9 to have to come in and get it from him and threatened to fight
10 anyone who entered the cell. In his words, "I can't wait 'til
11 this door opens. Somebody going to get fucked up today."
12 Following through on this threat, he fought with officers who
13 entered his cell.

14 I note parenthetically that in the course of this
15 confrontation, the defendant stated, "I don't care which one of
16 you motherfuckers open this door, dude or bitch. I'm going to
17 kill you first chance I get. All you white fucks deserve to
18 die, anyway. I'm going away for life. I got nothing to lose.
19 It may not be someone on this shift, but one of your friends is
20 going to die. You treat me like an animal. That's just how I'm
21 going to act. First chance I get I'm going to break someone's
22 neck. I'm going to look you right in the eyes while I kill one
23 of you. If I beat this rap, I gonna come back here and kill as
24 many of you fucks as I can and go back to the joint. I'll teach
25 you motherfuckers a lesson. You are going to remember me. I'm

1 going to fuck this shit up. I'm going to destroy everything I
2 touch. It might not be today or tomorrow. One of you will not
3 be paying much attention, and that's when I'm going to break
4 your fucking neck."

5 It is apparent that the defendant is a person who
6 seethes with hate and malevolence. Multiple times he has
7 engaged in sexually inappropriate and aberrant behavior in the
8 presence of corrections staff, including females, as well as
9 non-corrections counselors. Multiple times the defendant has
10 damaged or threatened to damage the property of his places of
11 confinement.

12 During his allocution at the original sentencing
13 hearing, the defendant stated he had worked on himself, that he
14 was trying to go to school and that he was in a drug class. The
15 defendant stated further that, quote, "Once a person gets to a
16 certain age, you grow out of what you used to do," close quote,
17 and he explained that he had been trying to better himself. In
18 fact, the defendant even promised that he would continue trying
19 no matter what happened at the sentencing hearing. Despite
20 these promises and assurances, the defendant has continued to
21 misbehave while in prison, and his actions speak much louder
22 than his words.

23 The defendant's recent disciplinary history with the
24 Bureau of Prisons is included in the October 29, 2015,
25 supplemental report prepared by the probation officer, and it

1 shows two additional incidents of misconduct since the date of
2 the original sentencing hearing. In August 2015, even after the
3 defendant's case had been remanded from the Seventh Circuit and
4 I assume he knew he would be coming back for a resentencing, the
5 defendant still could not abide by the prison's rules.

6 According to the incident report, Officer Holmes notified the
7 defendant about the unsanitary conditions in his cell, namely,
8 having his window covered and objects on top of the inmates'
9 lockers. Despite this warning, while Officer Holmes was making
10 rounds in the unit, the defendant's cell still appeared to be
11 untidy and/or unsanitary. At the disciplinary hearing, the
12 defendant initially stated, "Our room was in clean," before
13 declining any further comment.

14 Standing in isolation, this incident might not give the
15 court much pause, but it takes on additional significance given
16 the defendant's volatile history. If the defendant cannot
17 follow even the simplest of rules while in prison, the court has
18 doubts that he would be able to follow the rules of society once
19 he is released.

20 In June of 2015, during the time when the defendant
21 knew his case was on appeal and although he knew my original
22 sentence was based in part upon his misbehavior while he was in
23 custody, at a time when he should have been on his best
24 behavior, the defendant was found guilty of stalking. According
25 to the disciplinary file, the defendant was found in the

1 psychology area without authorization. When Lieutenant Long
2 explained to the defendant that he had been counseled about not
3 going to that area, the defendant became angry and began to
4 argue, at which point Lieutenant Long told the defendant that he
5 was not to go to that area. In response the defendant stated,
6 "I'll go where I want and stick my dick where I want."

7 This incident is another example in a long line of
8 incidents in which the defendant acts out based on his own
9 impulses and without regard to societal norms. It seems to me
10 that the defendant truly thinks he is above the law and that the
11 rules don't apply to him and that he can do whatever he wants
12 whenever he wants. I believe the defendant's antisocial
13 behavior is so entrenched in the defendant's nature and
14 disposition that I have serious doubts about his ability to ever
15 be rehabilitated and function appropriately in a civilized
16 society. The defendant simply cannot control his base urges,
17 even if his conduct is offensive or hurtful to other people, and
18 he shows no signs of being able to reform his ways.

19 As I said at the previous sentencing hearing, I found
20 the defendant to be extremely incorrigible, and the defendant's
21 conduct since then has reaffirmed this conclusion. I believe
22 the defendant is absolutely addicted to his antisocial behavior
23 and needs to be incarcerated for a lengthy period of time in
24 order to properly protect the public from further crimes of the
25 defendant and to dissuade him from continuing his criminal and

1 antisocial behavior.

2 In addition to his blatant disregard for the rules of
3 society, I find that the defendant also has no respect for the
4 welfare and safety of other people. Despite being shot multiple
5 times over the course of his life and having firsthand knowledge
6 of the pain and suffering that comes as a result of that type of
7 violence, the defendant himself carried a firearm while he was
8 dealing drugs. This gun was not just for show. I have no doubt
9 that the defendant would have willingly used that gun. He would
10 have willingly used deadly force if he felt that there was a
11 threat to himself, his drugs, or his drug proceeds.

12 This callous disregard for the potential suffering of
13 other people is the ultimate hypocrisy, given the defendant's
14 history of gunshot wounds. Even though he is personally and
15 intimately aware of the pain and suffering which is caused by
16 being shot, he is perfectly willing to inflict that type of
17 horrific injury on another person.

18 At the original sentencing hearing, after describing
19 some particularly violent threats the defendant has made in the
20 past, I had determined that this defendant is a person who is
21 depraved and pernicious, and I have no reason to change that
22 conclusion now.

23 Also, there is no basis to change my conclusion that
24 the defendant's classification as a career offender provides an
25 accurate assessment of the defendant's lengthy criminal history.

1 Indeed the court previously noted that the defendant, who has 25
2 criminal history points, is properly characterized in every
3 sense of the term as a career offender. As Mr. Pedersen points
4 out, 25 criminal history points is almost double those points
5 that are required to establish a criminal history category of
6 six, and, in addition, there were juvenile and criminal
7 offenses, as well as serious traffic offenses, for which
8 criminal history points were not assigned.

9 This designation as a career offender had a strong
10 impact on the sentence previously imposed in this case and was
11 one of the primary reasons the court imposed a within guidelines
12 sentence. The court continues to believe that the defendant's
13 status as a career offender, which is reserved for repeat
14 offenders who have not been deterred from committing additional
15 serious crimes despite prior sentences for either crimes of
16 violence or controlled substance offenses, provides a strong
17 basis for a sentence that is above the low end of the guideline
18 range.

19 The court's sentence is based upon more than the
20 defendant's conduct as a drug dealer. It is also supported by
21 his violent and harmful behavior. From the time he stabbed his
22 stepbrother at the age of 15 to the mob action he committed when
23 he was 29 to the incidents of threats and violence while the
24 defendant has been in custody on these charges, he has
25 demonstrated a propensity to engage in violent behavior, and it

1 is alarming and disturbing that such a person carries a firearm
2 in furtherance of his drug trafficking activities.

3 If anything, the career offender enhancement does not
4 fully capture the seriousness of the defendant's criminal
5 history, and a sentence above the low end of the guidelines
6 range is necessary in my opinion to properly account for the
7 defendant's actual history and characteristics. There are good
8 reasons above and beyond his two drug offenses why the defendant
9 is described as a career offender.

10 He began selling drugs at the age of ten. He was first
11 brought into the court system at the age of 15 when he stabbed
12 his stepbrother in the back with a butcher knife. In a month he
13 will be 37 years old, yet he has never held legitimate
14 employment in his entire adult life. The defendant's history of
15 violating criminal laws is long and contemptible.

16 On March 30th, 1994, he was placed on juvenile
17 probation for aggravated battery. Less than six months later he
18 committed the offense of resisting law enforcement, reckless
19 driving, and driving without a driver's license. On those
20 offenses he was placed with the Indiana Boys School on official
21 probation. He was released from official probation on June
22 20th, 1995.

23 Less than two months later he committed the offense of
24 possession with intent to deliver one to 15 grams of cocaine.
25 On that offense he was committed to the Illinois Juvenile

1 Department of Corrections. He was released from the Juvenile
2 Department of Corrections on May 9th, 1996.

3 Just ten months later he committed another aggravated
4 battery. He was sent to adult prison on that offense. He was
5 released on parole December 3rd, 1997.

6 Just six days after his release on parole, he drove an
7 uninsured vehicle without a valid driver's license. Just
8 49 days after that, after committing those offenses, he
9 committed a robbery. For the third time he was sent to the
10 Illinois Department of Corrections.

11 I may have that wrong. I think that was the second
12 time he was committed to the Illinois Department of Corrections.
13 No, that's right. He was committed to the Juvenile Department
14 of Corrections on September 11th, 1995. He was committed to the
15 adult Department of Corrections for the aggravated battery.
16 That was on June 19th, 1997.

17 He was released on parole January 25th, 1999, and just
18 four and a half months later he committed obstructing justice,
19 which involved flushing a baggie with an off-white rock
20 substance down the toilet.

21 During the next ten months on three separate occasions,
22 he drove an automobile with a suspended driver's license.

23 Then on April 25th, 2000, he committed offenses of
24 unlawful use of weapons and possession of a firearm without a
25 firearm owner's identification card.

1 Within the next 15 months, on two separate occasions he
2 committed the offense of driving with a suspended license and
3 fleeing to elude a police officer, which involved nearly
4 striking a police officer with a vehicle.

5 Then on July 31st, 2001, less than eight months after
6 committing the offense of fleeing to elude a police officer, he
7 committed another possession with intent to deliver one to 15
8 grams of cocaine, which involved yelling at a police officer
9 that she was a white racist motherfucker and stated, "I'd kill
10 you if these cuffs weren't on," and said, "I'll spit in your
11 motherfucking face, you ho ass bitch." On this offense the
12 defendant was sent to prison for a fourth time.

13 It is important to note what while the defendant was
14 out on bond for this case and just 43 days after being out on
15 bond -- or after committing the offense of possession with
16 intent to deliver drugs, he committed an aggravated battery for
17 which he received his fifth prison sentence.

18 He was released from prison after serving the jail
19 sentences for possession with intent to deliver and aggravated
20 battery on March 18th, 2004. Just two months later he committed
21 another offense of driving while license suspended, and just
22 nine days after that he committed his third possession with
23 intent to deliver one to 15 grams of cocaine. For that offense
24 he was given his sixth prison sentence.

25 He was released from prison on March 14th, 2006.

1 Within the next 28 months he committed two separate offenses of
2 driving while license revoked, as well as felony mob action.
3 Then three years later he committed the instant offense.

4 The defendant has had the benefit of juvenile
5 probation, official probation at the Indiana Boys School, adult
6 probation, conditional discharge, and parole. He has received
7 counseling at the Sinnissippi Counseling Center in Oregon,
8 Illinois. He has been sentenced to prison six times, yet none
9 of these have effected a change in the defendant's criminal
10 behavior. The defendant incessantly persists in committing
11 crimes.

12 The criminal laws which govern society mean nothing to
13 him. He makes his way through life by continually and
14 chronically violating the law to facilitate his own aberrant
15 lifestyle. As he frankly admitted to the probation officer, a
16 normal life for him has, for the most part, always included
17 gangs, guns, selling or using drugs, and violence.

18 The defendant's criminal behavior is an ingrained
19 component of his character, and I am convinced that unless there
20 is some astonishing and unlikely transformation -- I should say
21 astonishing transformation, which I believe is unlikely,
22 although gang activity may subside, his life will be pervaded by
23 guns, selling or using drugs, and violence until the day he is
24 disabled from committing crimes or dies. Despite my misgivings,
25 I can only hope that a lengthy prison sentence will be that

1 transformative agent that dissuades the defendant from
2 committing further crimes once he is released from custody.

3 At this point the court must also address the concerns
4 that were raised by the Seventh Circuit in its opinion in this
5 matter, as well as similar issues raised by the court's decision
6 in United States v. Presley. In particular, the court will
7 address the defendant's age at the time of his expected release
8 and whether a sentence above the low end of the guidelines range
9 is necessary to meet the sentencing goals of incapacitation,
10 general deterrence, and specific deterrence. In this regard,
11 the court will also discuss the high discount rate that occurs
12 when dealing with lengthy sentences, and I will also consider
13 the anticipated costs of incarceration. I make these comments
14 with the highest regard for the authority and dignity of the
15 Court of Appeals. The guidance and directives to this and other
16 courts contained in the Court of Appeals' decision is well taken
17 by me.

18 As for defendant's age, although I did not explicitly
19 consider that factor during the original sentencing hearing, I
20 recognize that the sentence I imposed would keep the defendant
21 incarcerated into his sixties. When I originally imposed the
22 sentence in this case, the defendant had already served over two
23 and a half years in pretrial custody. Therefore, by my
24 calculations, with no good time credits earned, the defendant
25 would be released around July 2046 and would be a little older

1 than 67 and a half years at that time.

2 His current projected release date on the Bureau of
3 Prisons website is listed as September 23rd, 2045. So, it
4 appears that he has already earned some good time credit to
5 reduce -- or he has already been given some good time credit to
6 reduce his total term. Nevertheless, even if the defendant was
7 able to earn the maximum amount of good time credit, a
8 proposition that does not seem very likely in my opinion, he
9 would still be 62 years old at the time of his release.

10 In the Seventh Circuit's opinion in this case, the
11 court states that being an armed drug dealer is a young man's
12 career and something that a man would be unlikely to resume in
13 his fifties, let alone in his late sixties or early seventies.
14 The Court of Appeals references a statistic showing that
15 defendants in their sixties accounted for only 1.18 percent of
16 persons entering federal prisons in 2012 for drug offenses.
17 Those same statistics become slightly higher, but still under
18 2 percent if the court considers other possible offenses, such
19 as violent offenses and weapons offenses rather than limiting
20 the type of offense to drug offenses. This higher statistic
21 would be appropriate in this case given that the defendant's
22 criminal activity in the past has not been limited to only drug
23 offenses.

24 In any event, the court is not convinced that these
25 generalized statistics provide an accurate prediction of this

1 defendant's likelihood to recidivate. As the Seventh Circuit
2 was careful to note, an unlikely outcome is not synonymous with
3 an impossible outcome. Indeed the 2012 data provided by the
4 Bureau of Justice statistics shows when looking at the actual
5 number of inmates rather than percentages that there were 320
6 prisoners entering federal prison for drug offenses who were
7 between the ages of 61 and 70 years old and 37 more if you also
8 count those who entered prison at 71 or older.

9 Another study cited by the Seventh Circuit showed that
10 15 percent of inmates released after the age of 50 were
11 rearrested within three years of their release. I am well aware
12 that it is impossible to predict exactly what will happen when
13 the defendant is released from custody. And although I
14 recognize that on average a defendant is less likely to commit
15 violent or drug-related offenses in his sixties, based on this
16 particular defendant's history and characteristics, and despite
17 Mr. Poke's statement today that he has grown and matured, I
18 believe that he will be among the small percentage of aging
19 inmates who do recidivate. Therefore, I continue to conclude
20 that a sentence above the minimum guideline range is the most
21 appropriate sentence in this case.

22 On that note, I would refer the parties to the case of
23 United States v. Bullion, 466 F.3d 574. In that case the
24 defendant argued that since the tendency to commit crimes,
25 violent and otherwise, diminishes with age, a 58-year old need

1 not be given a 22-year sentence in order to be kept out of
2 circulation until he is safe. The Seventh Circuit rejected the
3 defendant's argument stating, "That may well be true of the
4 average 58-year old, but given the defendant's unusually violent
5 criminal history and the fact that even an elderly person has
6 enough strength to pull the trigger of a shotgun, the district
7 court should certainly worry about what the defendant might do
8 in his seventies. The curious implication of the defendant's
9 argument is that no violent criminal should be kept in prison
10 beyond the age of say, 70, but that there should be no limit for
11 white collar criminals since their physical capacity to commit
12 their preferred types of crime does not diminish with age."

13 Although I recognize that Mr. Poke's history of violent
14 offenses is not as serious as that of the defendants in Bullion,
15 I believe Mr. Poke's overall chronic, persistent, and serious
16 criminal behavior, in and out of custody, makes the reasoning in
17 Bullion applicable to this case.

18 I believe that this defendant, who is considered both a
19 career offender and an armed career criminal and has numerous
20 prior convictions involving either controlled substance offenses
21 or violent offenses, among other things, is not entitled to a
22 great reduction of his sentence because of his age. Unless he
23 makes some dramatic change in his life, which again I consider
24 unlikely, I believe that this defendant would tend to return to
25 a life of crime once he is released from prison and that he

1 would still have the capacity and propensity to commit any
2 number of offenses.

3 As previously noted, the defendant has never had
4 legitimate employment during his entire adult life. His
5 vocation in life is crime. Accordingly, the defendant's age
6 does not alter my conclusion that an above the low end of the
7 guidelines range is warranted here.

8 I would like to spend a moment discussing Section
9 3553(a)(6), which requires a sentencing court to consider
10 unwarranted sentence disparities. As the Seventh Circuit has
11 noted on many occasions in cases such as *United States v.*
12 *Boscarino*, 437 F.3d 634, "Sentencing disparities are at their
13 ebb when the guidelines are followed, for the ranges are
14 themselves designed to treat similar offenders similarly."

15 Because it usually takes some time for a criminal
16 defendant to build up the necessary criminal history to be
17 classified as a career offender, I believe that many defendants
18 who are similar to this defendant and are facing an advisory
19 guideline range of 360 months to life imprisonment will be in
20 their thirties, such that a within guideline sentence for a
21 career offender will often result in a sentence which keeps the
22 defendant incarcerated into his sixties.

23 Moreover, I believe that such a sentence is actually
24 consistent with the intent of Congress that is expressed in
25 Title 28, Section 994(h), which, as I discussed at the previous

1 sentencing hearing, was the impetus for the career offender
2 guideline calculation. In view of the foregoing, in the case of
3 Mr. Poke, his sentence should be among -- above the minimum
4 guideline imprisonment range.

5 Turning next to the Seventh Circuit concern with what
6 it refers to as the high discount rate that criminals tend to
7 have, I recognize that an increase in punishment when
8 considering a lengthy sentence does not necessarily lead to an
9 increase in general deterrence. However, aside from a brief
10 mention at the original sentencing hearing of the need for the
11 sentence imposed to afford adequate deterrence to criminal
12 conduct, my analysis did not focus on or specifically rely on
13 this particular factor.

14 As I have stated today, the sentence imposed in this
15 case was based largely upon the nature and circumstances of the
16 offense and the history and characteristics of the defendant,
17 the need to provide just punishment for the offenses of
18 conviction, the need to protect the public from further crimes
19 of the defendant, and to specifically deter Mr. Poke from
20 committing crimes in the future.

21 The studies cited by the Seventh Circuit indicate that
22 the exact rate at which offenders discount prison time to be
23 served in the future is unknown. So, although there might be
24 some minimal additional deterrent effect gained by the increase
25 in punishment, it was not critical to my analysis or even

1 possible to determine the exact amount of deterrence. So, I
2 assume for the sake of argument that as I pass sentence in this
3 case, there will be a negligible amount of general deterrence
4 that would accrue as a consequence of the later years of the
5 defendant's sentence.

6 Finally, although not mentioned in this case, the
7 Seventh Circuit did discuss in the Presley opinion the need for
8 the court to consider the cost of incarceration. I did consider
9 the cost of incarceration in this case. It is noted in the
10 presentence investigation report, and, of course, I am sensitive
11 to it. I am also concerned with the rising costs associated
12 with aging prisoners. I recognize that the costs of
13 incarceration may be high, but it is necessary in some
14 situations to make these expenditures, and I believe this is one
15 of those circumstances. Therefore, my consideration of the cost
16 of incarceration does not alter my previous determination that a
17 term of imprisonment above the minimum guideline range is
18 appropriate here.

19 In view of the foregoing, I have determined -- in view
20 of the foregoing and in consideration of the guidance and
21 directives contained in the opinion of the Court of Appeals, I
22 have determined that a sentence within the guideline range is
23 the most appropriate sentence in this case. I conclude that a
24 sentence sufficient but not greater than necessary to comply
25 with the purposes set forth in paragraph two of Section 3553(a)

1 is as follows.

2 Probation is not authorized in this case. I have
3 determined that the total term of imprisonment for all of the
4 counts of conviction should be 400 months. I structure that
5 sentence as follows. The defendant is hereby committed to the
6 custody of the United States Bureau of Prisons to be imprisoned
7 for 340 months on Count 1 and 180 months on Count 2. These
8 sentences are to be served concurrently. I will impose a
9 sentence of 60 months on Count 3 to be served consecutively to
10 the concurrent sentences on Counts 1 and 2, with, of course,
11 credit for any time he has previously served on these offenses.
12 I choose this particular sentence within the guideline range
13 based upon those considerations which I previously stated.

14 In view of the defendant's substance abuse and mental
15 health issues, I will recommend to the Bureau of Prisons that
16 the defendant be assigned to a facility which can provide him
17 with a residential drug abuse assistance program and counseling
18 program which will assist the defendant in dealing with his
19 anger management and mental health issues.

20 In regard to a fine, I have considered the factors
21 contained in Section 3572 and Guideline Section 5E1.2. The
22 court declines to impose a fine in this case because the
23 defendant is unable to pay a fine and is not likely to be able
24 to do so. The defendant shall pay a special assessment of \$100
25 on each count of conviction for a total of \$300. That is due

1 immediately. He's to be given credit for any amounts previously
2 paid toward his special assessment, although I do not believe he
3 has made any payments.

4 In view of the specific facts and circumstances of this
5 case, I believe continuing court oversight would benefit the
6 defendant and the community. I have determined that upon
7 release from imprisonment, the defendant shall serve a term of
8 supervised release of six years on Count 1, five years on
9 Count 2, and five years on Count 3. These supervised release
10 terms shall all be served concurrently.

11 As to the mandatory conditions of supervised release,
12 I'll order that the defendant not commit another federal, state,
13 or local crime. The defendant shall cooperate in the collection
14 of a DNA sample at the direction of the United States Probation
15 Office, if he has not already provided a DNA sample with respect
16 to this case. The defendant shall submit to a drug test within
17 15 days of release on supervised release and not more than 104
18 periodic drug tests per year thereafter for use of a controlled
19 substance. The defendant shall pay the special assessment
20 imposed.

21 As to the discretionary conditions, I believe the
22 following conditions should be imposed as they serve to support
23 the defendant's rehabilitation and reintegration into the
24 community and facilitate supervision by the probation officer
25 and in doing so encourage the defendant to comply with the law

1 and deter him from committing future crimes.

2 As a condition of supervised release, the defendant
3 shall not knowingly leave the Northern District of Illinois
4 without the permission of the court or probation officer. The
5 defendant shall report to the probation officer as directed by
6 the court or probation officer. The defendant shall follow the
7 instructions of the probation officer. The defendant shall
8 notify the probation officer at least ten days prior to any
9 change in residence or employer.

10 As further conditions, the defendant shall permit the
11 probation officer to visit the defendant at home between the
12 hours of 6:00 a.m. and 10:00 p.m. or at work upon prior notice
13 to the defendant and confiscate any contraband in plain view of
14 the officer.

15 As an additional condition, the defendant shall notify
16 the probation officer within 72 hours of being arrested or
17 questioned by a law enforcement officer, and the defendant shall
18 not enter into any agreement to act as an informer or special
19 agent of a law enforcement agency without the permission of the
20 court.

21 I believe the following additional conditions should be
22 imposed on the basis that they serve to ensure that the
23 defendant is engaged in lawful pursuits rather than criminal
24 activity in light of the defendant's history and
25 characteristics.

1 The defendant shall not knowingly visit places where
2 controlled substances are illegally sold, used, distributed, or
3 administered, and the defendant shall not meet, communicate, or
4 otherwise interact with a person whom the defendant knows to be
5 engaged or planning to engage in criminal activity unless
6 granted permission to do so by the probation officer.

7 Furthermore, I believe the following conditions should
8 be imposed on the basis that it will serve to support the
9 defendant's rehabilitation and provide him with needed substance
10 abuse treatment, particularly in light of the defendant's
11 history of self-reported substance abuse problem and also his
12 mental health issues. I'll order as a condition of supervised
13 release that the defendant shall participate in a substance
14 abuse and mental health evaluation and participate in any
15 treatment program approved -- program or programs approved by
16 the United States Probation Office.

17 Finally, I'll order -- I believe the following
18 condition should be imposed on the basis that it serves to
19 ensure that the defendant pays the special assessments imposed,
20 while taking into consideration the defendant's ability to pay
21 such amounts. I'll order the defendant to pay any remaining
22 balance of the special assessments at a rate of not less than
23 10 percent of the defendant's gross earnings minus federal and
24 state income tax withholding, unless the defendant demonstrates
25 that he lacks the ability to pay the amounts at such rate.

1 Mr. Cook, have I addressed all of your arguments,
2 including your main arguments in mitigation?

3 MR. COOK: Yes, your Honor.

4 THE COURT: Do the parties know of any reason other
5 than those already expressed why the sentence should not be
6 imposed as stated? Mr. Pedersen?

7 MR. PEDERSEN: No, your Honor.

8 MR. COOK: No.

9 THE COURT: I will enter a judgment of conviction and
10 order the sentence imposed as stated.

11 Mr. Poke, you have a right to appeal the adjudication
12 of guilt in this case, as well as the sentence imposed by me.
13 Any notice of appeal must be filed within 14 days of the entry
14 of judgment. You or your attorney may file a notice of appeal.
15 If you so request, the clerk will prepare and file a notice of
16 appeal in your behalf.

17 If you are unable to pay appeal costs, you have a right
18 to ask for permission to appeal in forma pauperis. If you are
19 unable to afford an attorney, the Court of Appeals may appoint
20 an attorney to represent you on appeal at no cost to you.

21 Mr. Cook will remain your attorney on appeal unless the Court of
22 Appeals appoints another attorney to represent you on appeal.

23 Defendant's remanded to the custody of the United
24 States Marshal. Court's in recess.

25 DEFENDANT POKE: Judge, I got a question, if I can. I

1 want to put on record to object on some of the --

2 THE COURT: No, no. That's not a question. You say
3 you're going to object.

4 DEFENDANT POKE: Well, some of the things that you said
5 wasn't accurate.

6 THE COURT: Okay. Well, you're going to have to
7 discuss those with Mr. Cook then and take any action you think
8 is appropriate.

9 DEFENDANT POKE: Some of the things that you read off,
10 they wasn't accurate, as far as my history and my convictions.

11 THE COURT: All right. That's all. You've had your
12 chance to make a statement in allocution. I passed the
13 sentence. If there's anything else we need to do in this case,
14 you can do that in a form of a motion through your attorney.
15 Court's in recess.

16 (Which were all the proceedings had in the above-entitled
17 cause on the day and date aforesaid.)

18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter.

20

21 /s/ Mary T. Lindbloom

22 Official Court Reporter

23

24

25